

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**SOUTHERN HELICOPTER
SERVICE, INC.**
8092 Memphis Street, Suite 205
Millington, TN 38053

**ADMINISTRATIVE
CONSENT ORDER**
2012-WW- 12

TO: Southern Helicopter Service, Inc.
8092 Memphis Street, Suite 205
Millington, TN 38053

John S. McHann
6980 S. Helene CV
Millington, TN 38053-4721

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Southern Helicopter Service, Inc. (Southern Helicopter) hereby agree to the following Administrative Consent Order (Order). Southern Helicopter agrees to pay fish restitution and investigation costs of \$5,972.40 to the Department. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Kurt Levetzow
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353
Ph: 319/653-2135

Relating to legal requirements:

Aaron Brees, Attorney
Iowa Department of Natural Resources
Des Moines, Iowa 50319-0034
Ph: 515/281-5965
aaron.brees@dnr.iowa.gov

Payment of restitution to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 503219-0034

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II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I (water quality) and the rules promulgated or permits issued pursuant thereto; Iowa Code section 481A.151, which authorizes the collection of restitution costs for harm to wildlife; and Iowa Code section 455B.109 and administrative rules in 567 Iowa Administrative Code (I.A.C.) chapter 10, which authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

The Department and Southern Helicopter hereby agree to the following statement of facts:

1. Southern Helicopter is a business that offers aerial application of herbicides, pesticides, and fungicides for agricultural purposes.
2. At approximately 11:39 AM on July 25, 2011, a helicopter owned and operated by Southern Helicopter crashed in the northeastern corner of property owned by Tom Sneddon, located at 2249 Highway 38, Wilton, Iowa.
3. At the time of the crash, the helicopter was carrying approximately 250 gallons of a mixed liquid solution that contained Headline fungicide. The active ingredient of Headline is pyraclostrobin. Headline is known to be acutely toxic to fish, including exposure resulting from runoff.
4. Local fire departments applied approximately 1,000 gallons of water to the crash site. This water carried the Headline mixture down a drainage area on the Sneddon property and into a tile line on the neighboring property owned by David Duffy. This tile line discharges into an unnamed stream that runs south into Otter Creek. Otter Creek flows into Sugar Creek which flows into the Cedar River near Moscow, Iowa.
5. Kurt Levetzow, environmental specialist senior at Department Field Office 6 (FO6), arrived at the site at 1:30 PM. Personnel onsite provided him with an update of the situation. The fire department had placed approximately fifteen sandbags in the drainage area in an attempt to stop the water from flowing to the tile inlet. Mr. Levetzow noted that water was flowing through and over the sandbags shortly after his arrival. He encouraged the fire department to arrange for a load of dirt to be dumped on the sand bags to help dam up the runoff.
6. At approximately 2:00 PM, Mr. Levetzow and Department Conservation Officer Jeff Harrison drove to where the tile line drains into the unnamed stream. They observed that water in the stream was slightly cloudy and both noted a "chemical smell."

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7. At approximately 2:45 PM, FO6 environmental specialist senior Jim Sievers collected a water sample from the field tile discharge accompanied by property owner David Duffy. State Hygienic Laboratory results from this sample found pyraclostrobin at a concentration of 40,000 ug/L.

8. At approximately 3:55 PM, Mr. Sievers and Mr. Levetzow walked south along the unnamed stream. They noted that the water was milky white, the chemical odor was stronger than it was previously, and dead fish were present in the stream. A water sample was collected and Fisheries Bureau biologist Paul Sleeper was called. State Hygienic Laboratory results from this sample found pyraclostrobin at a concentration of 19,000 ug/L.

9. At approximately 4:40 PM, Mr. Sievers and Mr. Levetzow moved downstream to Otter Creek. They did not observe any signs of impact at that time.

10. At approximately 5:15 PM, Mr. Levetzow and Mr. Sleeper began walking up Otter Creek beginning at its intersection with Highway 38. They walked upstream to the confluence of the unnamed stream. They then walked up that stream and encountered the chemical plume. Signs of this contamination included the chemical odor, fish swimming downstream to avoid the chemical, and then as they proceeded further upstream, struggling fish, then dead fish. Photographs and video were taken documenting the scene.

11. On July 26, 2011, Mr. Levetzow and Mr. Sleeper returned to the area to conduct a count of the dead fish. They determined that by the end of July 26, fish were dead from the tile outlet down to the confluence of Otter and Sugar creeks. A follow up visit by Mr. Sleeper on July 28, 2011 indicated that the fish kill had continued downstream from that confluence to the 112th Street bridge over Sugar Creek east of Moscow, and that the kill appeared to be over at that time. Mr. Sleeper produced a fish kill report that contains the results of the July 26 count and indicates that an estimated 16,647 fish were killed.

IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.186(1) and 567 I.A.C. 62.1(1) prohibit the discharge of "a pollutant" into "a water of the state" unless it is released pursuant to a valid permit issued by the director.
2. A "pollutant" is defined in Iowa Code section 455B.171(18) as "sewage, industrial waste, or other waste." Fungicide contaminated liquid, such as that released into the environment in the present case, is a pollutant under this definition.

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3. The drainage systems, tiles, creeks, streams, and rivers described in section III (4) of the Order are "waters of the state" pursuant to Iowa Code section 455B.171(37) which defines the term to include "any stream, ... watercourse, waterway, ... drainage system, and any other body or accumulation of water...natural or artificial, public or private, which are contained within...the state...."

4. As Southern Helicopter did not have a permit authorizing the discharge of fungicide to these waters, it has discharged a pollutant into a water of the state in violation of the above provisions.

5. Iowa Code section 455B.173 states that the Environmental Protection Commission (EPC) shall develop water quality standards which shall, at a minimum, maintain the existing quality of the water of the state. The EPC has done so in 567 I.A.C. chapter 61.

6. 567 I.A.C. 61.3(2) states that all surface waters of the State "shall be free from substances attributable to wastewater discharges or agricultural practices...which are acutely toxic to human, animal, or plant life." Southern Helicopter's release of its mixed liquid solution containing Headline fungicide caused the deaths of fish and is a violation of this provision.

7. Iowa Code section 481A.151 states that any person who is liable for polluting water of the state in violation of state law shall be required to pay restitution for any resulting injury to wild animals. This section authorizes the Natural Resource Commission (NRC) to adopt rules applicable to the method of calculating restitution assessments and authorizes the Department to recover these assessments through Iowa Code chapter 17A contested case procedures. The NRC has adopted such rules in 571 I.A.C. 113.

8. Based on the authority provided by and methods specified in 571 I.A.C. 113 the Department is authorized to collect, and Southern Helicopter is liable for the following:

Fish restitution	\$4,276.08
Fisheries investigation costs	\$492.32
Field Services investigation costs	\$1,204.00

V. ORDER

THEREFORE, the Department hereby orders and Southern Helicopter agrees to the following:

1. Southern Helicopter shall pay to the order of the Iowa Department of Natural Resources a total of \$5,972.40 for fish restitution and investigation costs within 30 days of receipt of this Order.

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VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Additionally, Iowa Code section 455B.109 authorizes the EPC to establish by rule a schedule of civil penalties up to \$10,000 which may be assessed administratively. The EPC has adopted this schedule with procedures and criteria for assessment of penalties in 567 I.A.C. chapter 10.

ECONOMIC BENEFIT: Southern Helicopter did not benefit economically from the incident. Therefore, no penalty is assessed for this factor.

GRAVITY: A discharge resulting in a fish kill is a serious violation. However, given that the discharge resulted from an accident and efforts to protect human health and property, no penalty is assessed for this factor.

CULPABILITY: This incident was an unexpected accident. Southern Helicopter did not intentionally violate the law. Therefore, no penalty is assessed for this factor.

Based on the above factors, no penalty is assessed.

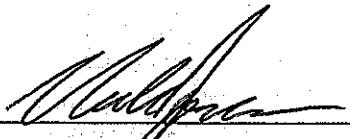
VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.175, 481A.151, and 561 I.A.C. 7.4(1), as adopted by reference by 567 I.A.C. chapter 7 and 571 I.A.C. chapter 7, authorize a written notice of appeal to the EPC and NRC, respectively. This Order is entered into knowingly by and with the consent of Southern Helicopter. By signing this Order all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.175.

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Dated this 2 day of April, 2012


ROGER L. LANDE, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 24 day of April, 2012